IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 5216 OF 2004

Nalini Laxman Yeolekar .. Petitioner

versus

Pukhraj Maniklal Jain .. Respondent

...

Mr.R.D. Soni i/b M/s.Ram & Co, for the petitioner.

CORAM : D.G. KARNIK, J

DATED : 27th August 2004

P.C:-

1. Heard the learned counsel for the petitioner.

2. Two grounds for possession are pressed before me viz. bonafide requirement and default.

3. As regards the bonafide requirement, the learned counsel submits that the premises are required by the plaintiff for the business of her sons. In

that regard, the appellate Court has held as follows:-

> "the sons of the plaintiff were running Bharati Provision Stores.Plaintiff's sons as well as daughter-in-law own shops at Govind Apartment, Swargandha Society. Plaintiff's husband owns shop at Geetanagar. The Plaintiff and her family members including sons run business at respective shops owned by them."

4. The plaintiff, her husband as well as sons are in possession of different shop. The finding concurrently recorded by the Courts below that the petitioners do not require the suit premises reasonably and bonafide is a possible finding which needs no interference in exercise of a writ jurisdiction.

5. As regards the ground of default, the suit premises were let out to the respondents under an agreement dated 6th June 1988 on the monthly rent of Rs.1,000/- for a period of 9 years. Agreement further provide that after the expiry of the period of 9 years, the respondent would pay rent at Rs.1150/-p.m. In the notice of demand dated 28th April 1997, the petitioner has claimed that the respondent has not paid the increases in the rent of

Rs.150/- per month from April 1994 and also the municipal taxes. There is no averment in the notice that the agreed rent of Rs.1,000/- was not paid. There is no demand in the notice of any arrears of agreed rent of Rs.1,000/-. In the circumstances, the notice cannot be said to be a notice of demand under section 12(2) of the Bombay Rents Hotel & lodging Houses Rates Control Act 1947 (for short 'the Act').

6. No issue was framed by the trial Court on the ground of default. In the appeal memo filed before the first Appellate Court, no ground was taken. The trial Court had wrongly not framed an issue of default. In the circumstances, a ground of default cannot be allowed to be raised for the first time in this Writ Petition.

Petition rejected.

D.G. KARNIK, J